

Superfund State Contract

State of Missouri, Department of Natural Resources

and the

U.S. Environmental Protection Agency

Big River Mine Tailings/St. Joe Minerals Corp.

Operable Unit 1 (OU01) Residential Action/Source Control

St. Francois County, Missouri

CERCLIS ID: MOD981126899

Contract No. 14-02-MO-07CR-01

30285341



Superfund

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1. GENERAL AUTHORITIES (40 C.F.R. § 35.6805(a))

This Superfund State Contract (SSC) is entered into pursuant to Sections 104(a)(1), (c)(2) and (c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9604(a)(1), (c)(2) and (c)(3); the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300; and other applicable federal regulations including 40 C.F.R. Part 35, Subpart O and 40 C.F.R. Part 31; and Title XVI of the Revised Statutes of the State of Missouri, Chapter 260, Sections 260.500 through 260.550 and Section 260.391. This SSC is entered into by and between the United States Environmental Protection Agency (EPA) and the State of Missouri (the State), acting through the Missouri Department of Natural Resources (Department). A SSC with a state is required before the EPA can obligate or expend funds for a remedial action (RA) at a site within a state and before the EPA can conduct the RA. A SSC with the EPA is required before the State can budget, appropriate, or expend funds for the CERCLA Assurances in section 9 of this SSC. The SSC must include the provisions set forth in 40 C.F.R. § 35.6805.

2. PURPOSE OF THIS SUPERFUND STATE CONTRACT (40 C.F.R. § 35.6805(b))

This SSC documents the responsibilities of the EPA (the lead agency) and the Department (the support agency) for the performance of the RA for the OU01 Residential Action/Source Control at the Big River Mine Tailings/St. Joe Minerals Corp Site (Site), located in St. Francois County, Missouri. This SSC outlines the basic purpose, scope, and administration of the work required for performance of the RA and includes those activities described in the attached Statement of Work (SOW), which is attached hereto as Appendix I and incorporated herein by reference. This SSC contains the provisions required under 40 C.F.R. § 35.6805, including the necessary assurances pursuant to Sections 104(c)(3) and (9), and 104(j) of CERCLA, 42 U.S.C. § 9604(c)(3) and (9), and (j); and 40 C.F.R. § 35.6805(i). Further, this SSC documents the State's involvement in the RA pursuant to Section 121(f) of CERCLA, 42 U.S.C. § 9621(f); and Section 300.515(g) of the NCP, 40 C.F.R. § 300.515(g). For purposes of this SSC, the term "CERCLA-funded" shall mean the RA funded by EPA, excluding any special account funds and/or any

other funds expended or otherwise provided by any Potentially Responsible Party (PRP) or funds from any other source which are not subject to the state cost share conditions in this SSC.

3. NEGATION OF AGENCY RELATIONSHIP (40 C.F.R. § 35.6805(c))

Nothing contained in this SSC shall be construed to create, either expressly or by implication, any agency relationship between the EPA and the Department or the State. The EPA (including its employees, agents, and contractors) is not authorized to represent or act on behalf of the State or the Department in any matter relating to the subject matter of this SSC, and the State and the Department (including its employees, agents, and contractors) are not authorized to represent or act on behalf of the EPA in any matter relating to this SSC.

4. SITE DESCRIPTION (40 C.F.R. § 35.6805(d))

A description of the Site, pursuant to 40 C.F.R. § 35.6105(a)(2)(i), including its location, background of events, physical characteristics, the nature of the release, past response actions at the Site by the EPA and/or the Department, or others, and the planned response action(s) at the Site, is contained in the Record of Decision (ROD) for the Site. The ROD is attached hereto as Appendix II and is incorporated herein by this reference. The Department has provided written concurrence with the attached ROD, including any remaining comments, if applicable.

5. SITE-SPECIFIC STATEMENT OF WORK (40 C.F.R. § 35.6805(e))

A Site-specific Statement of Work (SOW) pursuant to 40 C.F.R. § 35.6105(a)(2)(ii) stating the tasks to be performed for this response action, including estimated costs per task, is attached as Appendix I. This SSC constitutes the initial SSC for this Site.

**6. STATEMENT OF INTENTION TO FOLLOW EPA POLICY AND GUIDANCE
(40 C.F.R. § 35.6805(f))**

In addition to the requirements specified in CERCLA and the NCP, the EPA and the Department intend that all applicable EPA policy and guidance shall be adhered to by the EPA and the Department in carrying out the work set forth in this SSC, the SOW, the ROD, and the Remedial Design (RD).

7. PROJECT SCHEDULE (40 C.F.R. § 35.6805(g))

A general description of the project schedule and milestones, including a summary of the deliverables, is contained in the SOW (Appendix I) and the ROD (Appendix II). The EPA Remedial Project Manager (RPM) and the State Project Manager (SPM), without formal amendment to this SSC pursuant to Paragraph 11 of this SSC, may agree to adjust the project schedule unless such adjustment results in an extended delay to the project schedule. For the purposes of this SSC, an "extended delay" means a delay that will extend or alter the schedule by greater than one year. Likewise, changes that significantly increase the project costs or significantly alter the SOW and/or the ROD, thereby affecting the Department's ability to meet the conditions of this SSC, including cost share requirements, shall necessitate an amendment pursuant to Paragraph 11 of this SSC. For purposes of this SSC, changes that "significantly increase project costs" shall be those changes that cause an increase in costs of at least ten percent (10%) over original cost estimates.

8. DESIGNATION OF PRIMARY CONTACTS AND THEIR RESPONSIBILITIES (40 C.F.R. § 35.6805(h))

a. The EPA has designated:

Jason Gunter
U.S. Environmental Protection Agency, Region 7
11201 Renner Blvd.
Lenexa, KS 66219
Telephone: 913-551-7358
Facsimile: 913-551-9358
E-mail: gunter.jason@epa.gov

to serve as the EPA's RPM for the Site and this SSC. The designated RPM and/or the EPA's address and contact information may be changed by the EPA by written notice to the SPM without employing the amendment process contained in Paragraph 11 of this SSC.

b. The Department has designated:

Brandon Wiles
Missouri Department of Natural Resources
Hazardous Waste Program, Superfund Section
P.O. Box 176
Jefferson City, MO 65102
Telephone: 573-526-4208

Facsimile: 573-751-7869

Email: brandon.wiles@dnr.mo.gov

to serve as the Department's SPM for the Site and this SSC. The designated SPM and/or the Department's address and contact information may be changed by the Department by written notice to the EPA's RPM without employing the amendment process contained in Paragraph 11 of this SSC.

- c. The RPM and the SPM may make project changes that are within the scope of this SSC that do not cause an extended delay or significantly increase project costs, as those terms are defined in Paragraph 7 this SSC.
- d. Any disagreement between the RPM and the SPM shall be resolved as specified pursuant to Paragraph 24 (Issue Resolution) below.
- e. The RPM and the SPM shall agree on the nature and frequency of any reports generated pursuant to this SSC or any Appendix hereto, pursuant to 40 C.F.R. § 35.6815(c).

9. CERCLA ASSURANCES (40 C.F.R. § 35.6805(i)(1)-(5))

- a. **OPERATION AND MAINTENANCE** - Pursuant to the ROD, the SOW, and the RD for the Site, operation and maintenance (O&M) will be necessary after completion of the RA at the Site. The Cost Estimate, which is attached hereto as Appendix III and is incorporated herein by this reference, the ROD, the SOW, and the RD include cost estimates for O&M activities. The Department, on behalf of the State, hereby assures, as required by 40 C.F.R. § 6805(i)(1) and 40 C.F.R. § 35.6105(b)(1), that it will assume responsibility for the O&M for the implemented CERCLA-funded RA and that the O&M for this RA will remain in effect for the expected life of the response action. The Department's obligation to provide O&M will begin when the EPA and the Department determine concurrently pursuant to 40 C.F.R. § 300.435(f)(2) that the RA is operational and functional and the operational and functional determination is documented according to Paragraph 16.a. below. The EPA and the Department will enter into a written site transfer agreement formally transferring the Site from the EPA's CERCLA-funded RA to the Department for O&M. In addition, the Department hereby assures that any institutional controls implemented as part of the RA and

considered part of O&M will be monitored and maintained as part of O&M. The Department will conduct O&M according to an O&M plan prepared by the EPA in consultation with the Department. The EPA will provide a draft O&M plan to the Department for review and comment prior to the start of the RA. The O&M plan may be modified as needed by written agreement between the EPA and the Department. Each O&M activity will be evaluated as part of the five-year review required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and may be modified as appropriate after each five-year review as agreed to by the EPA and the Department.

b. TWENTY-YEAR WASTE CAPACITY

- i. In accordance with Section 104(c)(9) of CERCLA, 42 U.S.C. § 9604(c)(9) and 40 C.F.R. §§ 38.6805(i)(2) and 35.6105(b)(3), the Department, on behalf of the State, hereby assures the availability of hazardous waste treatment or disposal facilities within and/or outside the State that comply with subtitle C of the Solid Waste Disposal Act, as amended, and that have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the twenty (20) year period following the effective date of this SSC.
- ii. On July 17, 2009, EPA issued a memorandum entitled *Statement of Capacity Assurance in State Superfund Agreements* in which it concluded that there exists adequate national capacity for all capacity assurance plan management categories through December 31, 2034.

c. OFF-SITE STORAGE, TREATMENT, OR DISPOSAL

The EPA and the Department have determined that off-site treatment, storage, or disposal of hazardous substances is not required for this RA. In the event that off-site treatment, storage, or disposal of hazardous substances is required, the Department hereby agrees to assure, as required by 40 C.F.R. § 6805(i)(3) and 40 C.F.R. § 35.6105(b)(4), the availability of a hazardous waste disposal facility that is in compliance with Subtitle C of the Solid Waste Disposal Act, as amended, 42 U.S.C §§ 6901 – 6992k, and that is acceptable to the EPA.

d. REAL PROPERTY ACQUISITION

As described in the ROD, institutional controls are part of the RA. Although no interest in real property is expected to be acquired by the EPA or the State in implementing institutional controls at the Site, in the event that the acquisition of a real property interest is required, the EPA may acquire such interest. However, consistent with Section 104(j)(2) of CERCLA, 42 U.S.C. § 9604(j)(2), and Section 300.510(f) of the NCP, 40 C.F.R. § 300.510(f), and as required by 40 C.F.R. § 35.6805(i)(4) and 40 C.F.R. § 35.6105(b)(5), the State assures the EPA it will accept the transfer of such interest upon or before the completion of the RA pursuant to the requirements of State law.

e. PROVISION OF STATE COST SHARE

As required by Section 104(c)(3)(C) of CERCLA, 42 U.S.C. § 9604(c)(3)(C); and 40 C.F.R. § 35.6805(i)(5) and 40 C.F.R. § 35.6105(b)(2), the Department, on behalf of the State, shall pay ten percent (10%) of the actual CERCLA-funded costs of the RA. State RA cost share is not required for special account funds used by the EPA for implementation of the RA at the Site. It is anticipated that a portion of the RA for the Site will be exclusively accomplished with special account funds.

f. COST SHARE CONDITIONS (40 C.F.R. § 35.6805(j)(1)-(3))

- i. **Cost Estimate** – The RA shall include all actions until the RA is complete and determined concurrently by the EPA and the Department to be operational and functional. The total cost of the RA, excluding EPA's indirect costs, is based upon the ROD and is not expected to exceed \$125.12 million. It is estimated that the cost of the first two years of the RA implemented by the EPA will be approximately \$10-12 million. Funds in the existing special account will be used for the first two years of the RA, and will not require state RA cost share.
- ii. **Basis for Arriving at the Cost Estimate Figure** – A summary and description of the estimated costs for the RA are set forth in Appendix III.
- iii. **Financial Responsibilities of the EPA and the State** - The State shall pay ten percent (10%) of the costs of the remedy as provided in the ROD.

However, cost share is not required for special account funds used by the EPA for implementation of the RA.

iv. **Payment Schedule** – As set forth in Subparagraph e of this Paragraph, the Department, on behalf of the State, hereby assures payment to the EPA of ten percent (10%) of the actual cost of the CERCLA-funded RA including change orders and claims agreed to in advance by the Department. “Assure” as used in this Paragraph shall mean that the Department will seek appropriations for such payment pursuant to State law, and as specifically authorized by Section 260.391 RSMo. The Department shall pay its cost share in accordance with the following schedule:

1. The Department will make incremental payments totaling ten percent (10%) of the EPA’s CERCLA-funded RA costs for the Site at annual intervals beginning one (1) year after the start of the RA. The EPA will provide the Department with an annual invoice and accounting of costs expended on the Site by EPA.
2. Payment of the sums referenced in Paragraph 9(f)(iii)(1) shall become due ninety (90) days after receipt by the Department of the EPA’s annual invoice and accounting statement of the actual RA costs incurred by the EPA. The final payment shall become due ninety (90) days after the EPA submits to the Department a final invoice and accounting of the costs expended by the EPA at the Site after completion of the activities in the site-specific SOW attached as Appendix I. “Completion of the RA” for purposes of this section occurs when the Remedial Action Report has been signed by the EPA’s authorized representative.
3. The Department may prepay any portion of the required RA cost share up to ten percent (10%) of the actual CERCLA-funded RA costs incurred by the EPA. The Department assures its cost share obligation for actual CERCLA-funded RA costs at the Site which shall be adjusted at reconciliation as provided in Paragraph 10 (Reconciliation of Response Costs) below.

4. Costs incurred or services rendered by the Department may be applied to offset the Department's RA cost share in this SSC. Credits are limited to Site-specific expenses for the RA that the EPA determines are reasonable, appropriate, documented, direct, out-of-pocket expenditures of non-federal funds that have not been previously applied or reimbursed. Costs incurred or services rendered by the Department to offset its RA cost share must be identified in a Site-specific Cooperative Agreement or other appropriate instrument and verified and documented in accordance with financial administrative requirements for such instrument. Payment terms may only be adjusted through an amendment to this SSC as specified in Paragraph 11 (Amendments) below.
5. All RA cost share payments by the Department hereunder shall reference the contract number that appears on the face of this SSC, including the Site name, OU number and name, and CERCLIS ID. The preferred method of payment is an electronic funds transfer. Instructions for submitting payments electronically can be found at the following website,
http://www.epa.gov/cfo/finservices/payment_instructions.htm
If payments are sent by check or checks, they shall be made payable to the EPA and sent to the following address:

U.S. Environmental Protection Agency, Region 7
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

6. At the time that payment is made as provided in the preceding Subparagraph, the Department shall also send a copy of the payment to the EPA's RPM.
7. If either the EPA or the Department does not have the necessary funds available to complete their required obligations at any given

time during the term of this SSC, the EPA and the Department will meet to jointly determine an appropriate action given the absence of funding. Such action may include, but is not limited to, temporary suspension of activities, agreement on an alternate payment schedule, discontinuing the remediation or any other mutually agreed upon resolution. Any such resolution may require amendment of this SSC in accordance with Paragraph 11 (Amendments) above or termination of this SSC.

10. RECONCILIATION OF RESPONSE COSTS (40 C.F.R. § 35.6805(k))

This SSC shall remain in effect until the financial settlement of RA costs and final reconciliation of response costs (including, for example, change orders, claims, overpayments, reimbursements, as agreed to by the Department) to ensure that the EPA and the Department have satisfied their RA cost share requirements contained in Section 104(c)(3)(C) of CERCLA, 42 U.S.C. § 9604(c)(3)(C). Final reconciliation of all RA costs by the EPA shall follow the acceptance of the remedy by both the EPA and the Department, and is not contingent upon deletion of the Site from the National Priorities List (NPL). The Department may direct the EPA to return any overpayment of state cost share to the Department or to use the excess cost share payment at the Site to meet the state cost share obligation at another site in accordance with 40 C.F.R. § 35.6285(d).

11. AMENDMENTS (40 C.F.R. § 35.6805(l))

This SSC may be amended, *inter alia*, to revise the costs or to reflect modifications to the RA set forth in the ROD, the SOW, and the RD. Formal amendments to this SSC are required when modifications to RA activities are necessary or when modifications impact the state assurances pursuant to CERCLA and the NCP, or as otherwise provided by this SSC. Such amendments to this SSC must include a SOW for the amendment as described in Paragraph 5 (Site-Specific Statement of Work) above, setting forth the modified work, in addition to any other required modification to the RA, such as a ROD Amendment or Explanation of Significant Differences. Amendments to this SSC must be agreed to in writing by the signatories to this SSC, except as

otherwise provided in this SSC, and must be noted in all response agreements affected by the change(s).

12. LIST OF SUPPORT AGENCY COOPERATIVE AGREEMENTS (40 C.F.R. § 35.6805(m))

The following list includes all active support agency cooperative agreements and other relevant agreements pertaining to the Site and this SSC:

- Support Agency Cooperative Agreement (SACA) portion of the Superfund Combined Cooperative Agreement (SFCCA) number V99738107, effective April 1, 2014 through March 31, 2015.

13. LITIGATION (40 C.F.R. § 35.6805(n))

This SSC does not constitute a waiver by the parties to this SSC of their respective rights to bring an action or actions against any person or persons for liability under Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, or any other applicable statutory authorities or common law.

14. SANCTIONS FOR FAILURE TO COMPLY WITH TERMS OF THIS SSC (40 C.F.R. § 35.6805(o))

After all administrative remedies described herein have been exhausted, if the Department fails to comply with the terms of this SSC, any CERCLA assurance, and/or the negotiated payment terms, the EPA may proceed under the provisions of Section 104(d)(2) of CERCLA, 42 U.S.C. § 9604(d)(2), and may seek to enforce this SSC or to recover any costs incurred due to breach of the SSC by the Department in the appropriate court of competent jurisdiction. If the EPA breaches this SSC, the State may file suit and seek remedies in the appropriate court of competent jurisdiction after all administrative remedies described herein have been exhausted.

15. SITE ACCESS (40 C.F.R. § 35.6805(p))

a. Site Access

The EPA and the Department shall use their respective authorities as necessary and appropriate to secure access to the Site and any necessary adjacent properties as well as

any rights-of-way and/or easements necessary for the EPA, the Department, or their contractors to complete the response actions undertaken pursuant to the ROD, the SOW, the RD, and this SSC.

b. State Access

Representatives of the Department shall have access to the Site to review work in progress and shall comply with the Site Health and Safety Plan prepared pursuant to the SOW and RD. When possible, representatives of the Department shall coordinate visits to the Site in advance with the RPM. Likewise, when possible, the RPM will coordinate visits to the Site in advance with the SPM.

c. EPA Liability Waiver

The EPA shall not be responsible for any harm to any Department representative or other person arising out of or resulting from any act or omission by the Department in the course of a Site visit.

d. State Liability Waiver

Neither the State nor the Department shall be responsible for any harm to any EPA representative or other person arising out of or resulting from any act or omission by the EPA in the course of a Site visit.

16. FINAL INSPECTION OF THE REMEDY AND PROJECT CLOSEOUT (40

C.F.R. § 35.6805(q))

a. Final Inspection

Following completion of the CERCLA-funded RA, the EPA and the Department shall jointly inspect the Site to determine whether the remedy is functioning properly and performing as designed. If the EPA makes such a determination, it shall provide the Department a letter documenting the inspection of the constructed remedy and the beginning of the operational and functional period. The Department shall then provide its letter to the EPA in response, documenting its concurrence with the inspection of the constructed remedy and the beginning of the operational and functional period. At the conclusion of the operational and functional period (a period of up to one year after the EPA and the Department jointly inspect the constructed remedy and exchange letters jointly concurring on the beginning of the operational and functional period) which may

be extended as appropriate pursuant to 40 C.F.R. § 300.435(f)(2), a similar exchange of letters by the EPA and the Department will occur. Such concurring letters shall constitute the concurrent determination of the EPA and the Department that the CERCLA-funded RA is complete and operational and functional. The EPA thereupon will provide to the Department a draft Remedial Action Report for review and comment. After receiving such review and comment, the EPA will provide the Department with the final Remedial Action Report.

b. Completion of the Response Action, Including the O&M

The response action, including the O&M, shall be considered complete when the EPA, in consultation with the Department, determines that the work in the SOW (Appendix I) has been completed and the remedial action objectives specified in the ROD (Appendix II) have been attained.

17. THIRD PARTY (40 C.F.R. § 35.6805(r))

a. Exclusion of Third-Party Benefits

This SSC benefits only the State, the Department, and the EPA. It extends no benefit or right to any third party who is not a signatory to the SSC.

b. Liability

The EPA does not assume any liability to third parties with respect to losses due to bodily injury or property damage that exceed the limitations contained in the provisions of 28 U.S.C. § 1346(b), and 28 U.S.C. §§ 2671-2680. Neither the State nor the Department assumes any liability to any third parties with respect to losses due to bodily injury or property damage, beyond that permitted by State law

18. DURATION OF THE SSC (40 C.F.R. § 35.6805(s))

This SSC shall become effective upon the date of the last execution of this SSC by the EPA and the Department and shall remain in effect, with the exception of the CERCLA O&M assurance, until the final reconciliation of RA costs for the Site has been completed.

19. STATE REVIEW (40 C.F.R. § 35.6805(t))

The EPA hereby ensures that the Department, on behalf of the State, will have meaningful and substantial involvement with, including the ability to review and comment on, response actions pursuant to this SSC according to 40 C.F.R. § 35.6805(t) and 40 C.F.R. § 300 Subpart F. The EPA and the Department agree that all major documents developed for the implementation of the RA pursuant to this SSC, the SOW, the ROD, and the RD shall be reviewed and commented upon. The Department shall submit any such comments within thirty (30) days of the Department's receipt of the document. The review period may be lengthened or shortened for any individual document by agreement of the RPM and SPM. If the RPM does not receive comments within the appropriate time frame, the RPM may assume that the Department has no comments and proceed accordingly. However, the Department reserves the right to provide comments on any response action document or other response action work at any time.

20. RECORDS RETENTION (40 C.F.R. § 35.6815(d))

The EPA and the Department will maintain all financial and programmatic records, supporting documents, statistical records, and other records related to the Site for a minimum of ten (10) years following the final reconciliation and payment of all costs under this SSC. If any litigation, claim, negotiation, audit, cost recovery, or other action involving such documents or records has been initiated before the expiration of the ten-year period, the documents and records must be retained until completion of such action and resolution of all issues which arise from it or until the end of the regular ten year period, whichever is later.

21. EMERGENCY RESPONSE ACTIVITIES (40 C.F.R. § 35.6805(s))

Emergency response activities or emergency circumstances shall not be restricted by the terms of this SSC. However, remedial response activities may be suspended until the emergency activities are concluded, in which case the cost share, the response activities, and the terms of this SSC may be subject to amendment as specified in Paragraph 11 (Amendments) above, in addition to any other required modification to the remedial response activities.

22. NATIONAL PRIORITIES LIST DELETION (40 C.F.R. § 35.6805(s))

The EPA shall coordinate and consult with the Department in preparing the deletion package before deleting the Site from the NPL. Upon its review of all pertinent information, the Department will provide the EPA its written concurrence with the deletion of the Site from the NPL.

23. RESPONSIBLE PARTY ACTIVITIES (40 C.F.R. § 35.6805(u))

If, at any time during the period of this SSC, a responsible party comes forward to perform any work covered by this SSC, this SSC may be amended in accordance with Paragraph 11 (Amendments) of this SSC or terminated.

24. OUT-OF-STATE TRANSFERS OF CERCLA WASTE (40 C.F.R. § 35.6805(v))

The Department assures that any out-of-state recipient of CERCLA waste generated by any activity contemplated by this SSC or any Appendix hereto will comply with the requirements of 40 C.F.R. § 35.6120.

25. ISSUE RESOLUTION (40 C.F.R. § 35.6805(s))

In the event technical difficulties arise at the Site or questions are raised about any of the terms in this SSC by the parties hereto or any other disagreements arise, the RPM and the SPM shall first seek resolution before taking any other action as follows:

- a. Any disagreements arising under this SSC shall be resolved to the extent possible by the RPM and the SPM.
- b. If any such disagreement cannot be resolved by the RPM and the SPM, it shall be referred, as necessary, as follows: first, to the Director of the EPA Region 7's Superfund Division (or his or her designee) and, at the discretion of the Department, either to the Director of the Department's Hazardous Waste Program or to the Director of the Department's Division of Environmental Quality (or his or her designee); second to the EPA Regional Administrator (or his or her designee) who will consult with the Director of the Department of Natural Resources (or his or her designee). As determined by the EPA, matters of national significance and matters without legal precedent shall be referred to the

Assistant Administrator of the EPA's Office of Solid Waste and Emergency Response (or his or her designee) for final resolution. The EPA and the Department agree that the final, written decisions resulting from this process shall be binding, and shall become part of this SSC.

- c. Contractual resolutions and final audit determinations impacting this CERCLA-funded RA shall be binding to both the EPA and the Department and may require an amendment to this SSC according to Paragraph 11 (Amendments) above.

26. CONCLUSION (40 C.F.R. § 35.6820)

The SSC is concluded when:

- a. Response activities at the Site have been satisfactorily completed and payments have been made, as specified under Paragraph 9.e (Provision of State Cost Share) of this SSC, and in accordance with 40 C.F.R. § 35.6805(j);
- b. The EPA has a final accounting of all project costs, including change orders and contractor claims, pursuant to Paragraph 10 (Reconciliation of Response Costs) above;
- c. All State cost share payments have been made by the Department as specified under Paragraph 9.e (Provision of State Cost Share) above, and in accordance with 40 C.F.R. Part 35, Subpart O; and,
- d. The Department has assumed responsibility for O&M as required by Section 104(c) of CERCLA, 42 U.S.C. § 9604(c), and as addressed in the NCP at 40 C.F.R. § 300.510(c)(1), and in accordance with the O&M plan. In this particular case, the responsible parties will conduct actual Post-Removal Site Control (PRSC) and/or O&M activities at each source area included within OU01 (Bonne Terre, Big River/Desloge, Elvins/Rivermines, Federal, Leadwood, and National Mine Tailings sites) in accordance with the Administrative Order on Consent (AOC) and/or Unilateral Administrative Order (UAO) for Removal Actions applicable to each source area. O&M shall also include any necessary O&M on contaminated residential soil repositories located in the source areas. O&M activities will be conducted under the oversight of the Department.

After the conclusion of this SSC, the EPA may monitor the Department's compliance with the Department's assurance to provide all future O&M as required by Section 104(c) of CERCLA, 42 U.S.C. § 9604(c), and as addressed by the NCP at 40 C.F.R. § 300.510(c)(1), and in accordance with the O&M plan.

27. RESERVATION OF RIGHTS (40 C.F.R. § 35.6805(s))

This SSC does not constitute a waiver of the EPA's rights and the EPA expressly reserves its right to bring an action against any person or persons for liability under Section 106 and/or Section 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, or any other statutory provision, or common law. Similarly, this SSC does not constitute a waiver of the State's or the Department's rights and the State and the Department expressly reserve their rights to bring an action against any person or persons for liability under applicable law.

28. ENFORCEMENT, LITIGATION, AND COST RECOVERY (40 C.F.R. § 35.6805(s))

- a. The EPA, the State, and the Department may be entitled to assert claims against a third party (herein referred to as a potentially responsible party (PRP), whether one or more parties) for reimbursement of any services, materials, monies or other thing of value expended by the EPA or the State or the Department for CERCLA-funded response activities related to the RA or O&M described in the attached ROD and SOW and the RD and O&M plan.
 - i. The EPA, the State, and the Department hereby agree that they shall cooperate in and coordinate efforts to recover their respective costs of response actions taken at the Site, including the negotiation of settlements and the filing and management of any judicial actions against a PRP. The EPA, the State, and the Department also hereby agree that they shall not enter into a settlement with or initiate a judicial or administrative proceeding against a PRP except after having given notice in writing to the other parties to this SSC at least twenty (20) working days prior to the date of proposed settlement or commencement of the proposed judicial or administrative proceedings.

- ii. None of the parties to this SSC shall attempt to negotiate for or collect reimbursement of any SSC-specific response costs related to the RA described in the attached ROD and SOW and the RD and O&M plan on behalf of the other party, and authority to do so is hereby expressly negated and denied.
 - iii. If either the EPA or the State or the Department recovers monies from a PRP, the funds shall reduce the total CERCLA-funded RA expenditures that require State cost share. This reduction in the State cost share amount does not alter the State cost share percentages defined by this SSC. Excepting, however, any funds the State recovers for O&M activities; such funds would not reduce the total CERCLA-funded RA expenditures, but would be utilized by the State for O&M. Any cost recoveries for the RA described in the attached ROD and SOW and the RD and O&M plan shall necessitate an amendment to this SSC according to Paragraph 11 (Amendments) of this SSC.
- b. The EPA does not waive its right to recover all CERCLA-funded expenditures, including those for this Site. Similarly, the State and the Department do not waive their rights to recover all State and Department expenditures, including those for this Site.

IN WITNESS WHEREOF, THE PARTIES HERETO EXECUTE THIS SSC, WHICH MAY BE EXECUTED IN COUNTERPARTS, EACH OF WHICH SHALL BE DEEMED AN ORIGINAL:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: _____

Cecilia Tapia
Director, Superfund Division
U.S. Environmental Protection Agency
EPA Region 7

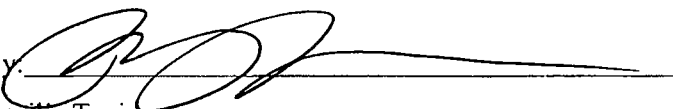
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9-29-14

- ii. None of the parties to this SSC shall attempt to negotiate for or collect reimbursement of any SSC-specific response costs related to the RA described in the attached ROD and SOW and the RD and O&M plan on behalf of the other party, and authority to do so is hereby expressly negated and denied.
 - iii. If either the EPA or the State or the Department recovers monies from a PRP, the funds shall reduce the total CERCLA-funded RA expenditures that require State cost share. This reduction in the State cost share amount does not alter the State cost share percentages defined by this SSC. Excepting, however, any funds the State recovers for O&M activities; such funds would not reduce the total CERCLA-funded RA expenditures, but would be utilized by the State for O&M. Any cost recoveries for the RA described in the attached ROD and SOW and the RD and O&M plan shall necessitate an amendment to this SSC according to Paragraph 11 (Amendments) of this SSC.
- b. The EPA does not waive its right to recover all CERCLA-funded expenditures, including those for this Site. Similarly, the State and the Department do not waive their rights to recover all State and Department expenditures, including those for this Site.

IN WITNESS WHEREOF, THE PARTIES HERETO EXECUTE THIS SSC, WHICH MAY BE EXECUTED IN COUNTERPARTS, EACH OF WHICH SHALL BE DEEMED AN ORIGINAL:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: 
Cecilia Tapia
Director, Superfund Division
U.S. Environmental Protection Agency
EPA Region 7

Date: 9-29-14

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: 

Sara Parker Pauley
Director

Missouri Department of Natural Resources

Date: 9-26-2014